

No. 3480.

POLITICAL DEPARTMENT.

Bombay Castle, 6th June 1885.

RESOLUTION OF GOVERNMENT.

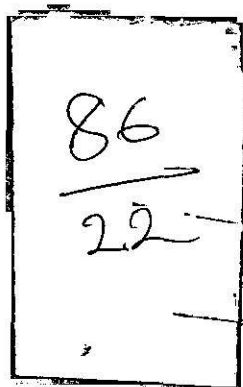
With reference to Government Resolution No. 2125, dated 6th April 1885, His Excellency the Governor in Council is pleased to direct that all the Courts (other than those under the Kolhápúr Agency) to which the provisions of Section 650 A of the Code of Civil Procedure have been applied by the Government of India's Notification No. 868-I. of 13th March 1885, should undertake the free service of processes issued by the Civil Courts in this Presidency, duly sent to them under Section 90 of the Code of Civil Procedure, on the understanding that their processes will be served free of cost by the Courts in this Presidency.

'The mutual free service of processes is already in force between the Civil Courts under the Kolhápúr Agency and the Civil Courts of the Presidency.

J. B. RICHEY,
Chief Secretary to Government.

To

The Commissioner, N. D.,
The Commissioner, C. D.,
The Commissioner, S. D.,
The Political Agent, Káthiáwár,
The Political Agent, Kolhápúr and Southern Marátha Country,
The Political Agent, Rewa Kántha,
The Political Agent, Mahi Kántha,
The Political Superintendent, Pálanpur,
The Political Superintendent, Sávantvádi,
The Agent to His Excellency the Governor, Surat,
The Collector and Political Agent, Khándesh,
The Collector and Political Agent, Sátára,
The Collector and Political Agent, Dhárwár,
The Collector and Political Agent, Sholápur,
The Registrar, High Court, Appellate Side (by letter),
The Judicial Department of the Secretariat (with reference to that Department transfer No. 3237, dated 8th May 1885).



No. 1912.

POLITICAL DEPARTMENT.

Bombay Castle, 2nd April 1886.

Letter from the Acting Political Agent, Kolhápúr and Southern Marátha Country, No. 104, dated 18th March 1886—Stating that the Collector of Belgaum has requested him to recover from a Babu residing in Miraj, the license tax assessment imposed on him, viz., Rs. 200, for the year 1884-85; that on a search for precedents he finds that the Collector of Bellary preferred a similar request in regard to land revenue arrears due by a defaulter who resided in Miraj; and that the Political Agent complied with the request, but the man could not be found. Stating further that although there is reciprocity between the British Civil Courts and the Miraj Civil Courts in regard to the execution of decrees, he is of opinion that no other British decrees, as for instance those of the Revenue Courts, should be enforced in a Native State, and that he bases his objections on the grounds which induced the Government of Bombay (in their letter to the Government of India, No. 48, dated 19th May 1868) to object to enforcement of civil decrees in 1868 in the absence of reciprocity or except through the Courts of the Native States. Soliciting a general ruling on the question as his views differ from those of his predecessor.

RESOLUTION.—The Governor in Council concurs in the view expressed by the Acting Political Agent.

W. WEDDERBURN,

Acting Chief Secretary to Government.

To

The Acting Political Agent, Kolhápúr and Southern Marátha Country,
All other Political Officers, excepting the Political Resident at Aden.

No 1115- of 1886
received 9th April 1886
Copy forwarded for infor-
mation to the Secy. of Sav-
-ern.

~~1. 11. 1886~~
~~11. 11. 1886~~
~~13. 11. 1886~~

Baghmanewi
Local collector & Col
-agent

Decrees.

Reciprocity in the matter of the execution of — passed in civil suits between British Courts and Courts of Native States under the political control of the Bombay Government.

No. 508.

POLITICAL DEPARTMENT.

Bombay Castle, 23rd January 1897.

Letter from the Acting Political Agent, Mahi Kántha, No. 1260, dated the 22nd May 1894—Requesting that orders may be passed regarding the execution by Native Chiefs of decrees passed by the Agency Courts, as a case has been brought to his notice in which a Jurisdictional Chief has refused to execute a civil decree passed by an Agency Court, pleading that there has been no mutual arrangement in this behalf. Stating the practice in vogue in Káthiáwár; and suggesting that the same may be applied to the Mahi Kántha. Making remarks.

Further letter from ditto ditto, No. 1637, dated the 30th June 1894—Stating, in reply to Government letter No. 3527, dated the 12th June 1894, that the suit in question was a monetary one, and was filed in the Court of the Native Assistant within whose jurisdiction the cause of action had arisen and who passed a consent decree, the amount of which was made payable in three instalments; that the last instalment not having been paid, the plaintiff made an application for execution against the property of the defendant mentioned therein; and that as the property was in Sádra village within the jurisdiction of Vásna, a Fifth Class Taluka, the application was forwarded by the Native Assistant for execution to the Talukdar who refused to execute. Making remarks.

Letter to the Secretary to the Government of India, Foreign Department, No. 5447, dated the 1st September 1894:—

"The Political Agent, Mahi Kántha, lately referred to Government the following case, and submitted the proposal indicated below. The Sádra Civil Station is an *enclave* of British jurisdiction in the petty Tálukdári Estate of Vásna, in which station by long custom the British Government exercises full jurisdiction over all persons and property therein. In a suit for payment of money due, the Native Assistant passed a decree for payment of the judgment debt in three instalments, and on default the plaintiff applied to execute the decree against the property of the defendant situated in the Sádra village just outside the limits of the Civil Station. The Vásna Tálukdár exercises petty jurisdiction of the fifth class only, but in the particular case the jurisdiction exercised by the Native Assistant was not the residuary jurisdiction of the British Government over Vásna, but its exclusive jurisdiction over the Sádra Station. No reciprocal arrangement for the execution of decrees exists between the Courts of the Civil Station and the Courts of Vásna; and I should add that the British jurisdiction in Sádra Civil Station rests not upon a Notification under the Foreign Jurisdiction Act but upon very long-established custom and unquestioned consent.

"2. The Political Agent invited attention to a Despatch No. 5, dated February 17th, 1876, from the Secretary of State, of which a copy is attached, sanctioning the execution of decrees passed in British Courts, in cases within the cognizance of such Courts, by Chiefs of the Third Class and lower classes in Káthiáwár, so long as their jurisdictional powers are not interfered in, with the remark that their consent should have been obtained to the orders to that effect which had been passed by the Political Agent. The Political Agent, Mahi Kántha, proposed that, with the exception of I'dar, every other State in the Mahi Kántha, where the Second Class Chiefs exercise a jurisdiction not higher than the Third Class Chiefs of Káthiáwár, should execute decrees of the British Courts passed in respect of suits within the cognizance of those Courts; the decrees being executed by Tálukdárs of the Fourth and higher classes in the spirit of Section 224 of the Civil Procedure Code as transferred decrees, and in other cases by the Tálukdárs as Nazirs of the British Courts.

"3. The Governor in Council considers it advisable, in view of the large number of Native States in this Presidency, to proceed with deliberation and

with the sanction of the Government of India in this matter; and the following principles commend themselves to his judgment as moderate and reasonable principles, which will combine the minimum of interference with the Native States with the maximum of public convenience.

"4. As to the first principle, I am to observe that there are a few Courts, and in course of time there may be a few more, not established by the Governor General in Council in Native States, (*e.g.* Notification No. 867-1, dated March 13th, 1885), whose decrees may, under Section 229 B of the Code of Civil Procedure, be executed in British India. A declaration that such privileged Courts must execute, through their own machinery, the decrees of all British Civil Courts, both those in British India and those established or continued in, or in respect of, foreign territory, seems reasonable and proper. If the best organised British Courts recognise the decrees of Native State Courts, the less well organised Native State Courts may well be expected to execute the decrees of all British Courts.

"5. As to the second principle, I am to observe that the recognition by British Indian Courts of the Acts of Court situated in the territories of Native States (which have not been established or continued by the Governor General in Council), is not likely to be extended to any length until the judicial systems of the Native States are greatly improved. Meanwhile there seems no reason why, as a preliminary step, reciprocal execution of decrees between Native State Courts and the Courts known as Courts established, or continued, by the Governor General in Council in, or in respect of, Native States, should not be recognised and provided for. The Governor in Council proposes to call for opinions as to the fitness of certain Courts for the extension of this limited scheme of reciprocal recognition, and to authorise reciprocal action where it seems desirable. As explaining why action in this direction might be left to the discretion of this Government, I am to remind the Government of India of the hundreds of jurisdictions in this Presidency, and of the fact that British Districts are honeycombed with foreign territory. The power, which the Governor in Council here asks for, would of course be limited to the execution of the decrees of the Native State Courts in areas not in British India, but outside British India such as Thána Circles, Cantonments in foreign territory, Civil Stations, Managed States, and Railways in foreign territory.

"6. There remains a third class of cases, namely, decrees passed by a British Court, exercising civil jurisdiction in, or in respect of, territory outside British India, where such Court exercises residuary civil jurisdiction, of which an instance is supplied by the Government of India Notification No. 394-1, dated January 28th, 1888. Here no question of reciprocity need arise. Such decrees must be executed or the civil jurisdiction of the Governor General in Council would be nugatory. In the opinion of this Government, they should be executed by the Native State's Chief Court, and the fact certified to the Political Agent's Court.

"7. I am to request that the Governor General in Council may be moved to give his sanction to these proposals. In the particular case put the decree issued by the Sádra Civil Station Court would not be executed in Vásna, outside the Civil Station of Sádra, unless the Vásna Courts were recognised by the Sádra Courts under the proposals contained in paragraph 5 above; for the case in question was not one which falls under the operation of the principle discussed in paragraph 6 of this letter.

"8. Finally as to the mode of execution the Governor in Council would prefer that in every case the authority, however small, of the Native State should be upheld, and the decree be transferred to the Tálukdár or Chief, wherever it may be executed, for execution. But if the Tálukdár does not satisfactorily explain why the decree has not been executed, the Political Agent should be authorized to enforce execution."

Letter from the Assistant Secretary to the Government of India, Foreign Department, No. 2308-1, dated the 15th July 1895:—

"I am directed to refer to Mr. Lee Warner's letter No. 5447, dated the 1st September 1894, which discusses the question of reciprocity, in the matter of the execution of decrees passed in civil suits, between British Courts and Courts of Native States under the political control of the Bombay Government.

"2. The Bombay Government propose —

(a) to declare that Courts of Native States whose decrees may, under Section 229-B. of the Code of Civil Procedure, be executed by Courts in British India, must reciprocate by executing the decrees of all British Courts, whether in British India or established or continued in, or in respect of, foreign territory;

(b) that reciprocal execution of decrees should, wherever enquiry shows this desirable, be recognized and provided for between Native State Courts and Courts established or continued by the Governor-General in Council, in, or in respect of, Native States;

(c) that the Chief Courts of Native States should be required to execute the decrees of British Courts in cases where the latter exercise residuary civil jurisdiction in, or in respect of, territory outside British India; and that the fact of such execution should be certified to the Court of the Political Agent concerned; and

(d) that, in order to uphold the authority of the Native State, execution should be effected through the Talukdar or Chief; but that the Political Agent should have authority to enforce execution if necessary.

"3. With regard to proposals (a) and (b) I am to observe that the Governor-General in Council is of opinion that the Bombay Government should proceed by obtaining the consent of the States concerned to the execution by their Courts of the decrees of British Courts. There will, doubtless, be no difficulty in obtaining this consent because, if the States are unwilling to execute the decrees of British Courts, the British Government can decline to execute their decrees. With reference, however, to the proposal made in paragraph 5 of Mr. Lee-Warner's letter under reply, *viz.*, that action with respect to (b) should be left to the Bombay Government, I am to invite attention to the Notification by the Government of India in the Foreign Department, No. 2183-I., dated the 2nd July 1890, and to observe that considerable provision has already been made for the execution by British Courts established in Native States of the decrees of Courts of the Bombay Native States. There is no objection to adding to the list of State Courts contained in that notification other State Courts recommended for the privilege by the Bombay Government, but the Notification in question issued in exercise of the powers conferred by Sections 4 and 5 of the Foreign Jurisdiction and Extradition Act and those powers are conferred on the Governor-General in Council and not on any Local Government.

"4. The Government of India do not quite understand what is in fact contemplated by proposals (c) and (d). It appears to them that a decree passed in the exercise of residuary jurisdiction ought *prima facie* to be executed under the direct authority of the Political Agent and that the Courts of Native States should only be permitted to execute such decrees—as a matter of favour, and in order to uphold the authority of the Native State—when the Talukdar or Chief voluntarily offers to do so, and for so long only as the duty is performed to the satisfaction of the Political Agent. The Government of India would, however, offer no objection to the suggestion by the Political Agent to such Chiefs as the Government of Bombay may think deserving of the privilege, that they should enter into an arrangement, under which execution of these decrees would be effected through the Chiefs, but without surrendering the authority of the Political Agent to enforce such execution himself in case of necessity."

RESOLUTION.—Copies of the above letters should be forwarded to the Political Agent, Mahi Kántha, for information and guidance, and should also be circulated to all Political Officers.

S. W. EDGERLEY,
Acting Secretary to Government.

To

The Commissioner in Sind,
The Commissioner, N. D.,
The Commissioner, C. D.,
The Commissioner, S. D.,
The Political Agent, Káthiáwár,
The Political Agent, Kolhápúr and Southern Marátha Country,
The Political Agent, Mahi Kántha,
The Political Agent, Rewa Kántha,
The Political Agent, Cutch,

[P. T. O.]

of 1897

Cañon Mundargi

2nd February 1971

Copy forwarded to the
Assistant Political agent for
information.



Collector & Political agent